

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. OP 10-0180

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JOSEPH CURTIS MORRISON, JR.,

Petitioner,

v.

WARDEN CAPTAIN O'FALLON and  
MIKE FERRITER (DOC),

Respondent.

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FILED

MAY 26 2010

Ed Smith  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

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**ATTORNEY GENERAL'S RESPONSE TO PETITION FOR  
A WRIT OF HABEAS CORPUS**

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In compliance with this Court's order of April 27, 2010, the Attorney General's Office responds to the petition for a writ of habeas corpus filed by Joseph Curtis Morrison, Jr.

**BACKGROUND**

In February 2004, Morrison was charged with felony DUI in Rosebud County because he had at least three prior DUI convictions. (D.C. Docs. 1, 3.) He entered a plea of guilty. (D.C. Doc. 28; 1/10/05 Change of Plea Transcript, attached as Ex. 1.) The presentence investigation (PSI) report states that Morrison had 49 prior convictions (9 felonies), including an expunged 1998

DUI conviction, two DUI convictions in 1993, and a tribal court DUI conviction in 2002. Morrison has a very long and troubling history of substance abuse and associated criminal activity. (D.C. Doc. 3 at 4-5.)

In March 2005, the sentencing court, Judge Hegel presiding, imposed a 13-month commitment to the Department of Corrections (DOC), along with a five-year suspended prison sentence. Morrison was promptly revoked for failing to report after he was released from prison. The revocation court committed him to the DOC for five years. (D.C. Docs. 33, 55, 64.)

Morrison did not file a direct appeal. Morrison did appeal from the revocation disposition, however, which was affirmed in State v. Morrison, 2008 MT 16, 341 Mont. 147, 176 P.3d 1027.

### **REASONS HABEAS RELIEF SHOULD BE DENIED**

The Court has ordered the Attorney General to address two claims:

(a) Morrison's claim that, because the arresting officer had no jurisdiction to arrest him, the district court lacked jurisdiction to convict him of felony DUI, and (b) Morrison's claim that tribal court DUI convictions cannot be counted against him for recidivist purposes under state law.

"[T]he burden in a habeas corpus proceeding is upon the petitioner to

convince the Court that a writ should be issued.” Miller v. District Court, 2007 MT 58, ¶ 14, 336 Mont. 207, 154 P.3d 1186 (citation omitted). Conclusory allegations are insufficient. See Ellenburg v. Chase, 2004 MT 66, ¶ 16, 320 Mont. 315, 87 P.3d 473. Here, while Morrison has supplied information indicating that he is an enrolled member of the Northern Cheyenne Tribe, he has not specifically alleged that he was arrested on Northern Cheyenne land and there is no evidence that he was. The Affidavit in support of the Information states that Morrison was spotted driving under the influence on Highway 212 near Ashland. (D.C. Doc. 1.) When Morrison entered his guilty plea in state court in January 2005, he did not claim that he was arrested on reservation land. Rather, the transcript of the change of plea hearing reflects that Morrison was drinking in a bar in Ashland and was stopped in front of a bank building in Ashland. (Ex. 1 at 10-14.)

Morrison has not provided any information upon which this Court could conclude that he was arrested within the boundaries of the Reservation. Judge Hegel, who has experience with state/tribal jurisdictional issues, made a point of documenting where Morrison’s offense and arrest occurred. (Ex. 1 at 10-12.) The briefing in State v. Brien (DA 07-452) may be of assistance to this Court if it has any concerns regarding the boundaries of the Northern Cheyenne Indian

Reservation. Morrison's offense and arrest, however, did not occur within those boundaries. The Reservation is dry. There are no bars on the Reservation.

Morrison's second issue is also without merit. Morrison was convicted of driving under the influence on the Flathead Reservation. Tribal court DUI convictions, including even uncounseled convictions, are available for recidivist prosecution and sentencing purposes under state law. See State v. Spotted Eagle, 2003 MT 172, ¶ 34, 316 Mont. 370, 71 P.3d 1239. When Morrison pled guilty to felony DUI, he represented that he had two prior state convictions for DUI and one prior tribal conviction for DUI. (Ex. 1 at 13-14.) "A voluntary and intelligent guilty plea constitutes a waiver of nonjurisdictional defects and defenses." State v. Gordon, 1999 MT 169, ¶ 23, 295 Mont. 183, 983 P.2d 377. "[J]urisdictional claims [are limited] to those cases in which the district could determine, at the time of accepting the guilty plea and from the fact of the indictment or from the record, that the government lacked the power to bring the indictment." Gordon, ¶ 25. Morrison has waived any challenge to his prior DUI convictions, specifically including his prior DUI conviction in tribal court.

Morrison's sentence is legal. Thus, Morrison's claims are also time barred and procedurally barred. Mont. Code Ann. § 46-21-102(1)

(postconviction time bar); § 46-21-105 (2) (postconviction procedural bar);  
§ 46-22-101(1) (habeas procedural bar).

### **CONCLUSION**

The petition should be denied.

Respectfully submitted this 26th day of May, 2010.

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By:   
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### **CERTIFICATE OF SERVICE**

I hereby certify that I caused a true and accurate copy of the foregoing  
Response to Petition for Writ of Habeas Corpus to be mailed to:

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DATED: 5/26/10 Mark Mattioli

**CERTIFICATE OF COMPLIANCE**

Pursuant to Rules 11 and 14 of the Montana Rules of Appellate Procedure, I certify that this response to writ is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double-spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word for Windows is not more than 5,000 words, excluding certificate of service and certificate of compliance.

Mark Mattioli  
MARK W. MATTIOLI

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**APPENDIX**

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D.C. Doc. 28; 1/10/05 Change of Plea Transcript ..... Ex. 1